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**Notice of Intended Regulatory Action (NOIRA)
 Agency Background Document**

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation(s)	9VAC25-800
Regulation title(s)	Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Discharges Resulting from the Application of Pesticides to Surface Waters
Action title	Amendment and Reissuance of General Permit Regulation
Date this document prepared	May 15, 2017

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Subject matter and intent

Please describe briefly the subject matter, intent, and goals of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of the proposed action is to amend and reissue a VPDES general permit for discharges from pesticides applied to surface waters to control pests, and/or applied to control pests that are present in or over, including near, surface waters. This permit expires on December 31, 2018 and needs to be reissued so pesticide operators can continue to have coverage in order to apply chemical pesticides that leave a residue in water, and all biological pesticide applications that are made in or over, including near, waters of the United States.

In addition, a periodic/small business impact review of this regulation will be conducted as part of this regulatory action. Please see the Agency Background Document located at www.townhall.virginia.gov for the specific details on the conduct of the review.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

APA: Administrative Process Act
Board: State Water Control Board
EO: Executive Order
EPA (U.S. EPA): United States Environmental Protection Agency
NOIRA: Notice of Intended Regulatory Action
NPDES: National Pollutant Discharge Elimination System
USC: United States Code
VAC: Virginia Administrative Code
VPDES: Virginia Pollutant Discharge Elimination System

Legal basis

Please identify (1) the agency (includes any type of promulgating entity) and (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The basis for this regulation is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(5) authorizes the Board to issue permits for the discharge of treated sewage, industrial wastes or other waste into or adjacent to state waters and § 62.1-44.15(7) authorizes the Board to adopt rules governing the procedures of the Board with respect to the issuance of permits. Further, § 62.1-44.15(10) authorizes the Board to adopt such regulations as it deems necessary to enforce the general water quality management program, §62.1-44.15(14) authorizes the Board to establish requirements for the treatment of sewage, industrial wastes and other wastes, § 62.1-44.16 specifies the Board's authority to regulate discharges of industrial wastes, § 62.1-44.20 provides that agents of the Board may have the right of entry to public or private property for the purpose of obtaining information or conducting necessary surveys or investigations, and § 62.1-44.21 authorizes the Board to require owners to furnish information necessary to determine the effect of the wastes from a discharge on the quality of state waters.

Section 402 of the Clean Water Act (33 USC 1251 et seq.) authorizes states to administer the NPDES permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA. This Memorandum of Understanding was modified on May 20, 1991 to authorize the Commonwealth to administer a General VPDES Permit Program.

Purpose

Please describe the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.

This proposed regulatory action is needed in order to establish appropriate and necessary permitting requirements for discharges of wastewater from chemical pesticides that leave a residue in water, and all biological pesticide applications that are made in or over surface waters. These discharges are considered to be point sources of pollutants and thus are subject to regulation under the VPDES permit

program. The permit regulation specifies requirements that protect water quality below the discharge and that is essential to protect the health, safety, or welfare of citizens.

The primary issue that needs to be addressed is that the existing general permit expires on December 31, 2018 and must be reissued in order to continue making it available after that date. Other issues that need consideration are:

- Whether the permit should not include coverage for or add restrictions for weed, algae, or pathogen control applications in tidal waters;
- Clarifying which operator (decision maker or applicator) must maintain a pesticide discharge management plan. Currently all operators that exceed certain thresholds must maintain a pesticide discharge management plan possibly resulting in duplicate PDMPs with different discharge management practices;
- Whether the narrative technology and water quality limits, monitoring requirements and other conditions (PDMP, special conditions and conditions applicable to all permits) of the permit are still appropriate; and
- Any other issues raised during public comment and technical advisory committee discussions.

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

Substantive provisions being considered are outlined in 'Purpose' above (potential issues that may need to be addressed as the regulation is developed).

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

One alternative would be to require registration statements (notices of intent) from each operator or a certain class of operators. However, the department believes the submittal of registration statements will not provide the Commonwealth with any more information than is currently administered by the Virginia Department of Agriculture and Consumer Services. The current method of coverage that does not require registration statements is the least intrusive and least costly alternative for small businesses and achieves the purpose of the regulation.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments.

The agency is seeking comments on this regulatory action, including but not limited to: (1) ideas to be considered in the development of this proposal; (2) the costs and benefits of the alternatives stated in this background document or other alternatives; (3) potential impacts of the regulation; and, (4) impacts of the regulation on farm and forest land preservation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

In addition, please see the periodic review/small business impact review announcement section below for details on specific comments requested for the conduct of the review of this regulation being conducted as part of this regulatory action.

Anyone wishing to submit written comments may do so by mail, email or fax to Elleanore Daub, P.O. Box 1105, Richmond, VA 23218, telephone no. 804/698-4111, fax no. 804/698-4032, elleanore.daub@deq.virginia.gov. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site (<http://www.townhall.virginia.gov>). Written comments must include the name and address of the commenter. In order to be considered, comments must be received before midnight on the last day of the public comment period.

Public hearing at proposed stage

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>).

Periodic review/small business impact review announcement

If you wish to use this NOIRA to announce a periodic review (§ 2.2-4017 & EO-17 (2014)) and a small business impact review (§ 2.2-4007.1) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete this section.

In addition, pursuant to Executive Order 17 (2014) and § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; (iii) designed to achieve its intended objective in the most efficient, cost-effective manner; (iv) is clearly written and easily understandable; (v) overlaps, duplicates, or conflicts with federal or state law or regulation; and (vi) technology, economic conditions, or other factors have changed in the area affected by the regulation since the last review.

Technical Advisory Committee

A technical advisory committee will be involved in the development of the proposed regulation.

The Board is using a technical advisory committee to develop a proposal. Persons interested in assisting in the development of a proposal should notify the department contact person by the end of the comment period and provide their name, address, phone number, email address and the organization you represent (if any). The primary function of the advisory committee is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus. Multi-applications from a single company, organization, group or other entity count as one for purposes of making the decision specified in the preceding sentence. Notification of the composition of the advisory committee will be sent to all applicants.

Family Impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulation will have no direct impact on the institution of the family or family stability.